



No. S117170
Vancouver Registry

the Supreme Court of British Columbia

Between:

ROSEMARIE SURAKKA as the personal representative of LISA CHERYL DUDLEY

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL OF THE PROVINCE OF
BRITISH COLUMBIA, DISTRICT OF MISSION, ATTORNEY GENERAL OF CANADA**

Defendants

NOTICE OF APPLICATION

Name(s) of applicant(s): Minister of Public Safety and Solicitor General of the Province of British Columbia and Attorney General of Canada (the "Applicants")

To: The Plaintiff, Rosemarie Surakka

TAKE NOTICE that an application will be made by the Applicants to the presiding judge or master at the courthouse at Vancouver on February 27, 2013 at 9:45 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. The Applicants seek an order pursuant to Rule 9-5 striking the Plaintiff's Notice of Civil Claim in its entirety and dismissing this action with costs on the ground that the Notice of Civil Claim discloses no reasonable claim on the basis that:

The Plaintiff, Ms. Surakka, has no standing to seek damages or a declaration for any alleged violation of Lisa Cheryl Dudley's rights under section 7 of the *Canadian Charter of Rights and Freedoms* (the "Charter") and that the alleged breaches of Ms. Dudley's section 7 Charter rights are not actionable after Ms. Dudley's death.

Part 2: FACTUAL BASIS

2. This action by is brought by Ms. Surakka, who claims to act as the personal representative of her daughter who is deceased, Lisa Cheryl Dudley. Ms. Surakka filed the Notice of Civil Claim on October 27, 2011.

Notice of Civil Claim, Part 1, para 1

3. The action is based entirely on the claim that members and employees of the Royal Canadian Mounted Police ("RCMP") allegedly violated Ms. Dudley's rights under section 7 of the *Canadian Charter of Rights and Freedoms* (the "Charter"). Ms. Surakka seeks a declaration that Ms. Dudley was deprived of her section 7 rights and damages pursuant to section 24(1) of the Charter.

Notice of Civil Claim, Part 2, para 1

4. Ms. Dudley died on September 22, 2008 after being shot twice on September 18, 2008 at her home by persons who are not parties to this action.

Notice of Civil Claim, Part 1, paras 8, 25

5. Ms. Surakka alleges that the Applicants are liable for a breach of Ms. Dudley's section 7 Charter rights because the RCMP members and employees allegedly did not respond adequately to a 911 call from a neighbour of Ms. Dudley's reporting what sounded like gun shots followed by a crashing sound. She claims that Ms. Dudley was deprived of her right to life and security of the person, and that the deprivation was not in accordance with the principles of fundamental justice because it was "arbitrary, reckless, negligent, and without justification in law."

Notice of Civil Claim, Part 1, para 26; Part 3, para 9

6. The Applicants filed their Responses to Civil Claim on February 29, 2012 and March 7, 2012. Each of the Defendants has pleaded, *inter alia*, that Ms. Surakka has no standing to bring this action, that any rights or remedies Ms. Dudley might have

had under the *Charter* were extinguished with her death, that the conduct alleged did not amount to a breach of the *Charter*, and that this action is barred by the passage of time.

Response to Civil Claim of Attorney General of Canada, Part 3, paras 1-8, 11

Response to Civil Claim of Minister of Public Safety and Solicitor General of the Province of British Columbia, Part 3, para 2

Response to Civil Claim of District of Mission, Part 3, paras 1-3, 6

7. The Plaintiff filed a Reply on April 27, 2012, pleading the six-year limitation period in section 3(5) of the *Limitation Act*, RSBC 1996, c 268 and, alternatively, the postponement provisions in section 6(3)-(5) of the *Limitation Act*.

Reply, paras 1, 2

Part 3: **LEGAL BASIS**

1) Plaintiff has no standing: Any Charter claim was extinguished with Ms. Dudley's death

8. Ms. Surakka has no standing to seek remedies for the alleged breach of Ms. Dudley's *Charter* rights. Ms. Surakka sues in her alleged capacity as the personal representative of Ms. Dudley and bases her claim entirely on the allegation that Ms. Dudley's section 7 *Charter* right was violated. Ms. Surakka makes no claim based on her own rights.

9. No person or entity other than the individual whose *Charter* rights are alleged to have been infringed has standing to seek a remedy for the alleged breach under section 24(1) of the *Charter*. The remedy under section 24(1) is personal in nature.

Borowski v Canada (AG), [1989] 1 SCR 342 at para 54

R v Edwards, [1996] 1 SCR 128 at para 55

R v Ferguson, 2008 SCC 6, [2006] 1 SCR 96 at para 61

Collins v Abrams, 2004 BCCA 96 at para 17

10. Furthermore, any cause of action based on the alleged violation of *Charter* rights terminates with the death of the individual whose rights are at issue.

Canada (AG) v Hislop, 2007 SCC 10, [2007] 1 SCR 429 at para 73

Giacomelli v Canada (AG), 2008 ONCA 346 at paras 16-20, leave dismissed [2008] SCCA No 278 (QL)

Stinson Estate v British Columbia, 1999 BCCA 761, 70 BCLR (3d) 233 at para 13

Wilson Estate v Canada (AG) (1996), 25 BCLR (3d) 181 at para 26

Canada (AG) v Vincent Estate, 2005 FCA 272 at para 28

Grant v Winnipeg Regional Health Authority et al., 2012 MBQB 88 at paras 17-30

11. Applying the principles that *Charter* rights are personal and that any right of action based upon them is extinguished with death, the Courts have consistently dismissed or struck out claims seeking remedies under section 24(1) of the *Charter* in respect of alleged violations of a deceased person's rights.

Hislop, supra at paras 72-73

Giacomelli, supra at paras 16-20

Stinson Estate, supra at paras 11-12

Wilson Estate, supra at paras 23-24

Grant, supra at paras 17-30

12. This claim should therefore be dismissed in its entirety on the bases that Ms. Surakka has no standing to advance Ms. Dudley's *Charter* rights and that any alleged cause of action terminated with Ms. Dudley's death.

Part 4: MATERIAL TO BE RELIED ON

13. The pleadings filed in this action.

The Applicants estimate that the application will take 1 day. The Respondent estimates the application will take 2 days.



This matter is within the jurisdiction of a master
This matter is not within the jurisdiction of a master

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must

- (a) file an application response in Form 33 within 5 days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and
- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the application response and the other documents referred to in Rule 9-7(12) of the Supreme Court Civil Rules.

Dated: February 14, 2013



Signature of

applicant lawyer for applicants

Jasvinder S. Basran,

Regional Director General

Per: David Kwan and Jennifer Dagsvik

Department of Justice

British Columbia Regional Office

To be completed by the court only:

Order made

in the terms requested in paragraphs
Part 1 of this notice of application

with the following variations and additional terms:

of

Dated: _____

Signature of

 Judge Master**APPENDIX****THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service

- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

THIS NOTICE OF APPLICATION is prepared and served by Jasvinder S. Basran, Regional Director General, British Columbia Regional Office, Department of Justice (Canada), whose place of business and address for service is the Department of Justice, 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9, Telephone: (604) 666-8742, Facsimile: (604) 666-9295, Attention: David Kwan and Jennifer Dagsvik.

